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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H4

DATE: JUL 25 2012 OFFICE: ROME, ITALY File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), and the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) were concurrently denied by the Field Office Director, Rome, Italy and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the applications will be approved.

The record reflects that the applicant is a native and citizen of Morocco who entered the United States on June 24, 2005 and was admitted as a temporary visitor until December 23, 2005. The applicant remained in the United States beyond his authorized period of stay before departing voluntarily on July 7, 2007. The applicant accrued unlawful presence in the United States from December 24, 2005 to July 7, 2007, a period in excess of one year. He was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse

The applicant was found to be additionally inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The applicant seeks permission to reapply for admission into the United States within 10 years of his departure under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The record further reflects that an Immigration Judge entered an order of removal against the applicant, in absentia, on November 28, 2007 when the latter did not appear in court because he had already departed to Morocco to tend to a family medical emergency. The Field Office Director determined that the applicant demonstrated good cause for his failure to appear, and thus found that the applicant is not inadmissible under section 212(a)(6)(B) of the Act.

The Field Office Director determined that the applicant had failed to establish extreme hardship to a qualifying relative. The Field Office Director noted that approving the Form I-212 would serve no purpose as the Form I-601 had been denied. The applicant's Form I-601 and Form I-212 applications were concurrently denied. *See Decision of the Field Office Director*, dated June 16, 2010. However, because the applicant filed individual Forms I-290B, Notice of Appeal or Motion, appealing the denials of the Form I-212 and the Form I-601 respectively, the AAO has prepared individual decisions related thereto.

The record contains, but is not limited to: Forms I-290B and counsel's letters; hardship letters; applicant's letters; numerous supporting letters; psychological records and medical records for the applicant's spouse and her mother and father; financial records; employment records, certificates, and newspaper articles about the applicant's spouse and her service to the community; Morocco country-conditions documents; birth and marriage records and family photos; and records pertaining to the applicant's inadmissibilities, removal proceedings, and demonstration of good cause. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

As noted above, the applicant departed the United States on July 7, 2007 in order to tend to a family medical emergency in Morocco. He was subsequently placed in removal proceedings and on November 28, 2007 an Immigration Judge entered an order of removal, in absentia. Accordingly, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law, and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant community ties and numerous attestations by others to his good moral character and essential presence in the community; his U.S. home ownership; the payment of taxes; and apparent lack of a criminal record. The unfavorable factors are the applicant's immigration violations including the overstay of his temporary nonimmigrant visa; failure to appear for a removal proceeding – albeit for good cause shown; and his periods of unauthorized presence and employment in the United States.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, a favorable exercise of discretion is warranted and the applicant's Form I-212 will be approved.

In proceedings for permission to reapply for admission, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The applications are approved.